

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re: Donald and Tracy Caputo,  
  
Debtors.

Case No. 04-63197  
Chapter 13  
Hon. Marci B. McIvor

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**OPINION SUSTAINING IN PART TRUSTEE'S OBJECTIONS TO THOMAS  
BUDZYNSKI'S APPLICATION FOR ALLOWANCE OF ATTORNEY FEES**

This matter is before the Court on the Trustee's Objections to Thomas Budzynski's Application for Allowance of Attorney Fees. The Trustee objects to the fees sought as excessive and unreasonable. For the reasons stated in this Opinion, the Court sustains in part the Trustee's Objections and awards Counsel total fees and costs of \$ 1,757.25. Reducing the award by \$2,000.00, the retainer paid at the commencement of the case, Counsel must disgorge \$242.75 to Debtors' estate.

**Jurisdiction**

This is a core proceeding under 28 U.S.C. § 157 (b)(2)(A) over which this Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(a).

**Statement of Facts**

Debtors filed a voluntary Chapter 13 bankruptcy petition on August 17, 2004. An Order Confirming Plan was entered on December 2, 2004. Thomas Budzynski represented Debtors early in the case, between May and September, 2004. Mr. Budzynski was responsible for the filing of the Petition, supporting schedules, statement of financial affairs and a wage deduction order, but was not involved in the case thereafter

(i.e. for the § 341 exam or confirmation of the plan). On February 17, 2005, Counsel filed an application seeking fees in the amount of \$2,187.50 (8.75 hours at 250 per hour) and costs of \$427.16. On March 4, 2005, the Trustee filed objections to the fee application. The Trustee asserts that the fees sought are excessive, unreasonable and/or unnecessary under 11 U.S.C. § 330, and that professional fees are sought for work that was ministerial or clerical in nature.

### **Standard for Fee Awards in Bankruptcy**

A court has the duty to review all fee applications, regardless of whether an objection has been filed, in order to protect the assets of the estate for the benefit of the creditors. 11 U.S.C. § 330(a)(2); *In re Bush*, 131 B.R. 364, 365 (Bankr. W.D. Mich. 1991).

A bankruptcy court has broad discretion in determining fee awards. *Manufacturers Nat'l Bank v. Auto Specialities Mfg. Co. (In re Auto Specialities Mfg. Co.)*, 18 F.3d 358 (6<sup>th</sup> Cir. 1994).

Section 330(a)(1) of the Bankruptcy Code provides that the court may award an attorney reasonable compensation for actual, necessary services rendered. 11 U.S.C. § 330(a)(1). Section 330(a) provides, in pertinent part:

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103 --

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any para-professional personal employed by any such person; and

(B) reimbursement for actual, necessary expenses.

(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

(3) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant facts, including

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue or task addressed; and

(E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for --

(i) unnecessary duplication of services; or

(ii) services that were not --

(I) reasonably likely to benefit the debtor's estate, or;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a) (emphasis added).

To summarize, 11 U.S.C. § 330(a) requires that requested fees must meet three conditions. The fees must be: (1) reasonable; (2) incurred for services that were actually rendered; and (3) incurred for services that were necessary. *In re Allied Computer*

*Repair, Inc.*, 202 B.R. 877 (Bankr. W.D. Ky. 1996).

The Sixth Circuit has adopted a “lodestar method” for actually applying the requirements set forth in 11 U.S.C. § 330. *In re Boddy*, 950 F.2d 334, 337 (6<sup>th</sup> Cir. 1991).

The lodestar method requires that the court first determine a reasonable hourly rate, and then multiply the rate times the reasonable number of hours expended to perform actual, necessary services. The Court may “then determine whether a global reduction or enhancement of the fees is in order.” *In re Atwell*, 148 B.R. 483, 492-93 (W.D. Ky. 1993).

The ability to review fee applications in the context of each individual case “permits the Court to balance the following two competing interests: (1) rewarding the attorney practicing bankruptcy on a level commensurate with other areas of practice; against (2) the need to encourage cost-conscious administration.” *Allied Computer Repair, Inc.*, 202 B.R. at 884-85. The burden of proof is upon the applicant to justify the requested fees. *In re Hamilton Hardware Co., Inc.*, 11 B.R. 326 (Bankr. E.D. Mich. 1981).

### **Objections to Fees**

#### **1. Reasonableness of Specific Time Entries**

The Trustee objects to specific time entries on the application as unreasonable and excessive. (Trustee’s Objections ¶¶ 3-6). The Court notes that Mr. Budzynski charges \$250 per hour for his time. While that hourly rate is not inherently unreasonable for an experienced and competent lawyer in the Chapter 13 context, it is a high rate and carries with it a responsibility to be extremely efficient. Having reviewed the entire application with specific attention to the entries to which the Trustee objects, the Court finds that the first

time entry for May 11, 2004 should be reduced by one hour, the second time entry for May 11, 2004 should be reduced by one hour, and the time entry for August 3, 2004 should be reduced by ½ hour. Counsel's fees will therefore be reduced by \$ 625.00.

## **2. Clerical Services / Overhead**

The Trustee objects to numerous entries in the fee application on the ground that the services provided were clerical in nature and, therefore, non-compensable as overhead. (Trustee's Objections ¶¶ 7-10). The Trustee presumably relies on *In re Woodward East Project, Inc.*, 195 B.R. 372 (Bankr. E.D. Mich. 1996); *In re Pinkins*, 213 B.R. 818 (Bankr. E.D. Mich. 1997) and *In re Bass*, 227 B.R. 103 (Bankr. E.D. Mich. 1998) in support of his position.

The Court agrees that attorneys may not bill clients for clerical tasks because those tasks are considered a part of a law firm's overhead. Clerical tasks include filing motions, mailing letters, typing (*Woodward East*, 195 B.R. at 377), opening files, organizing paperwork, entering client information into the system, filing papers, and copying. (*Pinkins*, 213 B.R. at 107).

Having reviewed the fee application in its entirety with specific attention to the Trustee's Objections thereto, the Court agrees that the time entries improperly include ministerial and/or clerical tasks. The Court therefore finds that the first entry dated August 27, 2004 should be reduced from \$312.50 to \$250, and that the second entry dated August 27, 2004 should be reduced by \$50.00 thus reducing fees for services on August 27, 2004 by \$112.50. The Court also finds that a \$30.00 expense for "messenger/taxi

service to USBC to file the petition and plan” dated August 17, 2004 is overhead, and that copying expenses for 89.91 dated September 20, 2004 (a week after the September 13, 2004 Stipulated Order for Substitution of Counsel for Debtors was entered) cannot be charged to the estate. Costs will be reduced by \$119.91.

### **Conclusion**

For the reasons stated above, the Court sustains in part the Trustee's Objections to Thomas Budzynski's Application for Allowance of Attorney Fees. Counsel is awarded fees in the amount of \$1,450.00 and costs in the amount of \$307.25 for a total of \$1,757.25. Reducing the award by \$2,000.00, the retainer paid at the commencement of the case, Counsel must disgorge \$242.75 to Debtors' estate.

/s/  
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Marci B. McIvor  
United States Bankruptcy Judge

Dated: May 20, 2005  
Detroit, Michigan